

## REMARKS

Reconsideration and removal of the grounds for rejection are respectfully requested.

Claims 19-21, 23-36 were in the application, claims 19 and 25 have been amended, and claims 29-36 were previously withdrawn.

Claim 19 was amended to further define the perpendicular rim (115) as formed by ends of the metallic sheet, as illustrated here in Fig. 4, and additionally to include the openings (117) as described on page 8, lines 18-19. As the claim language is supported by specification and drawings, no new matter is involved in this amendment.

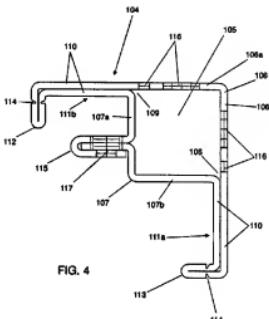


FIG. 4

Claims 19-28 were rejected under 35 USC 103(a) as being obvious over Rasmussen, U.S. Patent no 6,428,127 in view of Pochet, U.S. Patent no. 6,231,142.

In conducting an obviousness analysis, "[a] fact finder should be aware . . . of the distortion caused by hindsight bias and must be cautious of arguments reliant upon ex post reasoning." KSR Int'l Co. v. Teleflex Inc., 127 S.Ct. 1727, 1742, 167 L. Ed. 2d 705 (2007). This is because the genius of invention is often a combination of known elements that in hindsight seems preordained. In re Omeprazole Patent Litig., No. MDL 1291, 490 F. Supp. 2d 381, 2007 U.S. Dist. LEXIS 39670, at 400-01 (S.D.N.Y. May 31, 2007) (citation omitted) (quoting KSR, 127 S.Ct at 1742); see also Interconnect Planning Corp. v. Feil, 774 F.2d 1132, 1138 (Fed. Cir. 1985), Raytheon Co. v. Roper

Corp., 724 F.2d 951, 961 (Fed. Cir. 1983) (stating that "virtually every claimed invention is a combination of old elements").

The Court in KSR also wrote, "[r]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741, 167 L. Ed. 2d 705 (2007) ("To facilitate review, this analysis should be made explicit.") (citing *Kahn*, 441 F.3d at 988... "there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006).

If the prior art teaches away from combining known elements in the manner claimed by the invention at issue, discovering a successful way to combine them is less likely to be obvious. See *KSR Int'l*, 127 S. Ct. at 1740, 1745.

The KSR decision dealt primarily with a substitution, putting a known pivot on a known pedal, leading to the decision on obviousness. However, the facts are readily distinguishable from the facts here. Most importantly, more than a combination of known elements is involved, as independent claim 19 includes elements not found in the prior art. In particular, claim 19 as amended further defines the projection as being formed by the ends of the metallic sheet, as illustrated in Fig. 4, and no such structure is shown in the prior art.

It is also believed that the examiner has relied on improper hindsight supported

by mere conclusory statements, in alleging the claimed invention is obvious.

In the Advisory Action, the examiner alleged that the "improved" profile would not render the profile inoperative for its intended purpose. The Examiner cites to and has no support for this conclusion. Rather, it is clear that providing a projection as the applicant defines would make it impossible to mount the hinges in the way disclosed by Rasmussen, a position for which the applicant does find support in the art.

As stated previously, Rasmussen discloses a profile that provides a pair of sealing channels, and nowhere in Rasmussen is there any teaching or suggestion for modifying the profile as the examiner proposes. The Rasmussen profile has a simple design, and before one would make the profile more complex, and therefore more expensive to produce, there must be a clear indication that the modification is desirable.

The profile of Pochet has many more features, that is, bends and formed walls, beyond the fastening web 12; there are a number of channels defined, and a plurality of bends forming multiple structures with different orientations, and so many variations in structure, it is difficult to see how one would pick and chose among them to select the fastening web alone, to combine with Rasmussen to arrive at the applicants' invention.

One skilled in the art, taking these references as a whole would not be led to the applicants invention, but to something entirely different. A fair reading, without the application of hindsight, does not lead one skilled in the art to the present invention.

One skilled in the art would actually be led away from combining a fastening web with Rasmussen, as addition of the projection, as the examiner proposes, would

render the Rasmussen profile inoperative for its intended purpose, as illustrated below:

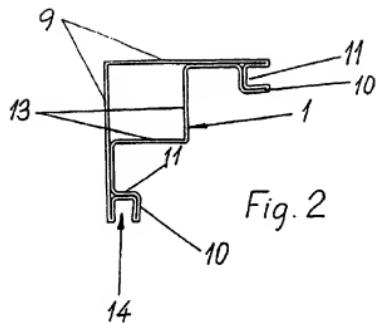


Fig. 2

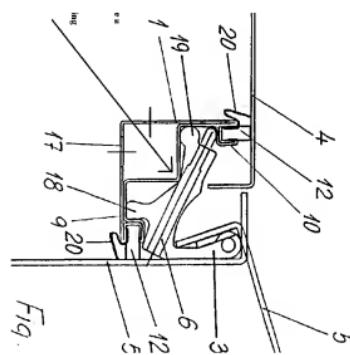
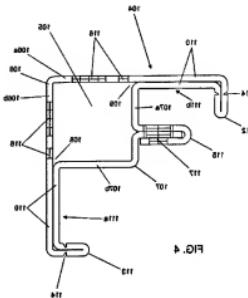
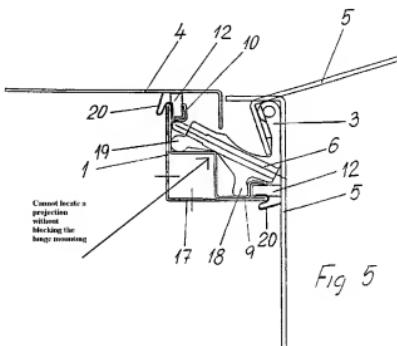


Fig.

Rasmussen requires a space for receiving a hinge between the sealing grooves; no projection from the vertex could extend outwardly, as then, the hinge for which this profile was designed could not be mounted. This is clearly illustrated in Fig. 5. Consequently, the modification proposed by the examiner would render the profile inoperative for its' intended

function, a result that clearly proves that one skilled in the art would not contemplate incorporating such a projection from Pochet in Rasmussen.

In view of the above, one skilled in the art would not find the present invention to be obvious, nor find any teaching or suggestion to lead him to provide the specific combination of structural features to arrive at the profile the applicant has created. Rather, one skilled in the art would be led away from the applicants' invention, and it is believed that claims 19-21, and 23-28 are patentable over the cited art.



Based on the above, favorable consideration and allowance of the application is respectfully requested. However, should the examiner believe that direct contact with the applicant's attorney would advance the prosecution of the application the examiner is invited to telephone the undersigned at the number given below.

Respectfully submitted,

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